UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARMEN POWELL

Plaintiff,

vs.

CITY OF CHULA VISTA, et. al.,

Defendants.

Civil No. 07CV1836 JAH (JMA)

ORDER DENYING PLAINTIFF'S MOTION TO PROCEED *IN FORMA PAUPERIS* [Doc. No. 2] AND DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL [Doc. No. 3].

On September 19, 2007 Plaintiff, a non-prisoner appearing *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983, alleging Defendants violated her constitutional rights. Plaintiff concurrently filed a motion to proceed *in forma pauperis* and a motion for appointment of counsel. For the reasons stated herein Plaintiff's motion to proceed *in forma pauperis* is DENIED; and Plaintiff's motion for appointment of counsel is DENIED.

I. Motion to Proceed *In Forma Pauperis*

Plaintiff has moved to proceed *in forma pauperis*. All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of $350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See* Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999).

This Court finds Plaintiff's declaration in support of her request to proceed *in forma pauperis* is insufficient to demonstrate she is unable to pay the fees or post securities required to maintain this action. *See* CivLR 3.2(d). Plaintiff states she is currently unemployed but receives $1,121.25 in Social Security payments and child support per month. She maintains she has a bank account with an account balance of $43.00 and she owns no property, and has no other assets or securities. Plaintiff lists that her current debts include utilities, food and clothing, but she does not specify the amount of her debts or monthly expenses. Plaintiff provides no information on debt or expenses that prevents her from being able to pay the one-time $350 filing fee. Based upon the information provided, this Court finds Plaintiff is able to pay the filing fee. Accordingly, the Court **DENIES** Plaintiff's motion to proceed *in forma pauperis*.

Although this Court cannot proceed until Plaintiff has either paid the filing fee required to maintain this action pursuant to 28 U.S.C. § 1914 or qualified to proceed *in forma pauperis*, this Court will allow Plaintiff adequate time to submit payment of the fee or file a motion to proceed *in forma pauperis* with additional information about her economic status. **Accordingly, Plaintiff is notified that in order to avoid dismissal of her case, she must either pay the $350 filing fee or file a motion to proceed *in forma pauperis* with adequate proof of her inability to pay the filing fee no later than November 26, 2007**. If Plaintiff does not pay the filing fee or file a motion to proceed *in forma pauperis* by **November 26, 2007**, her case will be dismissed without prejudice and she will have to begin again by filing a new complaint.

II. Appointment of Counsel

Plaintiff also requests the appointment of counsel to assist her in prosecuting this civil action. There is no constitutional right to appointment of counsel in a civil case. *See* Ivey v. Board of Regents of University of Alaska, 673 F.2d 266 (9th Cir. 1982); Randall v. Wyrick, 642 F.2d 304 (8th Cir. 1981). Although 28 U.S.C. §1915(d) confers on the court the discretion to appoint counsel to represent an indigent civil litigant, Aldabe v. Aldabe, 616 F.2d 1089 (1980), appointment of counsel is granted under Section 1915(d) only in "exceptional circumstances." Aldabe, 616 F.2d 1089; Wilborn v. Escalderon, 789 F.2d 1328 (9th Cir. 1986). A finding of exceptional circumstances requires an evaluation of both "the likelihood of success on the merits [and] the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved." Weygandt v. Cook, 718 F.2d 952, 954 (9th Cir. 1983)(citing Richards v. Harper, 864 F.2d 85 (9th Cir. 1988)). Neither of these factors is dispositive and both must be viewed together before reaching a decision on a request for counsel under section 1915(d). Wilborn, 789 F.2d at 1331.

The Court **DENIES** Plaintiff's request without prejudice, as neither the interests of justice nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

III. Conclusion and Order

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to proceed *in forma pauperis* is **DENIED without prejudice;**
2. To avoid dismissal of her case, Plaintiff has until **November 26, 2007** to either pay the $350 filing fee or file a motion to proceed *in forma pauperis* with adequate proof of her inability to pay the filing fee.
3. Plaintiff's motion for appointment of counsel is **DENIED without prejudice**.

DATED: October 19, 2007

HON. JOHN A. HOUSTON
United States District Judge